

MISSISSIPPI SUPREME COURT DECISIONS – NOVEMBER 7, 2019***SUPREME COURT - CRIMINAL CASES*****WARD V. STATE****CRIMINAL - FELONY**

CRIMINAL PROCEDURE - BURGLARY - ELEMENTS - The elements of burglary of a dwelling are (1) unlawful breaking and entering and (2) intent to commit a crime therein

CRIMINAL PROCEDURE - VERDICT - BURDEN OF PROOF - The State must prove beyond a reasonable doubt that the defendant committed all elements of the crime

CRIMINAL PROCEDURE - VERDICT - BURDEN OF PROOF - The burden of proof does not shift from the State

EVIDENCE - TESTIMONY - IMPEACHMENT - A prosecutor may not use prior statements of a witness under the guise of impeachment for the primary purpose of placing before the jury substantive evidence which is not otherwise admissible

FACTS

A Newton County grand jury indicted Joseph Ward for burglary of a dwelling. S.G., a juvenile at the time of the burglary, admitted that he had broken into Bernard Rigdon's house with his cousin A.E. and another juvenile named G. At trial, S.G. testified that he and A.E. had been the only ones that entered the Rigdons' house. S.G. denied that Ward had been involved in the burglary and denied that he knew Ward. The State produced a statement supposedly written by S.G. in which S.G. implicated Ward in the burglary. Although S.G. admitted that his signature was at the bottom of the document, he repeatedly testified that he did not remember writing the statement. A.E., also a juvenile at the time of the burglary, testified that G lived with his mom and his stepdad and that sometimes "Poppa" also stayed there. A.E. identified Ward as "Poppa," and he testified that G's house was "a couple of houses down" from the Rigdons' house. A.E. stated that in July 2016, he and S.G. were walking down the road when they saw the door to the Rigdons' house was open, and they went to G's house to tell him about it. A.E., S.G., and G then went back to the Rigdons' house and walked in. A.E. testified that the house had already been "messed up" from another person before they went inside. The trio took "a lot of things" outside and hid the items in a bush. He testified that the three then left the Rigdons' house, and A.E. and S.G. came back later in a stolen car to retrieve the items. A.E. said that after they retrieved the stolen property, they attempted to get Ward to sell the items, but Ward never got the chance because the police arrived. A.E. testified that he wrote a statement the night he was arrested that said he and S.G. went to G's house and that Ward was present because he lived there. A.E.'s written statement also alleged that Ward had been to the Rigdons' house the night before, that he saw guns, money, and diamonds at G's house, and that Ward convinced A.E. and S.G. to go back to the Rigdons' house with him. At trial, however, A.E. testified that he had no knowledge of whether Ward had been to the Rigdons' house the night before and that he made the prior statement because he was scared. A.E. denied that Ward had been involved in the burglary and stated that he, his cousin, and G had acted on their own. The State moved to have A.E.'s statement entered into evidence, and the trial court admitted it as an inconsistent statement to impeach. Deputy Kris Hollingsworth testified that he interviewed S.G. and A.E. after they were arrested and that both told him that Ward approached them about helping him burglarize the house. After some convincing, they agreed and went to the Rigdons' house and burglarized it. The trial court admitted Deputy Hollingsworth's testimony for impeachment purposes only. Ward denied breaking into the Rigdons' house and testified that he had never entered the house. The jury found Ward guilty of burglary. The trial court sentenced Ward to serve a term of twenty-five years. Ward appealed.

ISSUE

Whether the trial court erred in entering a guilty verdict against Ward.

HOLDING

Because S.G. and A.E.'s prior inconsistent statements and Deputy Hollingworth's testimony were improperly considered as substantive evidence, and because the substantive evidence presented in this case was insufficient to support Ward's burglary conviction, the trial court erred in entering a guilty verdict against Ward. Therefore, the Supreme Court reversed and rendered the judgment of the Newton County Circuit Court.

Reversed & Rendered - 2018-KA-01475-SCT (Nov. 7, 2019)

Opinion by Presiding Justice King

Hon. Christopher A. Collins (Newton County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Jordan Thomas](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 5, 2019

COURT OF APPEALS - CIVIL CASES

AVERY V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BARS - STATUTE OF LIMITATIONS - Under Miss. Code Ann. § 99-39-5(2), PCR motions are subject to a three-year statute of limitations

POST-CONVICTION RELIEF - PROCEDURAL BARS - SECOND/SUCCESSIVE PCR MOTION - Under Miss. Code Ann. § 99-39-23(6), a PCR motion shall be a bar to a second or successive PCR motion

FACTS

William Antonio Avery is serving sentences totaling ninety-nine-plus years for felonies that he committed between 2002 and 2010. Avery filed a number of motions for post-conviction relief ("PCR") attacking his convictions and sentences. The circuit court denied all of Avery's motions, and the Court of Appeals affirmed when Avery appealed. Avery made a new PCR motion more than three years after conviction, alleging that his attorney provided ineffective assistance of counsel by failing to move the court to allow him to withdraw his guilty plea after his sentence was pronounced. The circuit court denied his motion as time-barred, successive, and without merit. Avery appealed.

ISSUE

Whether the trial court erred in denying Avery's PCR motion.

HOLDING

Because Avery's present PCR motion was filed more than three years after he pled guilty, and because he has attacked the same conviction without success in prior motions, the trial court properly denied his PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2018-CP-01494-COA (Nov. 5, 2019)

Opinion by Presiding Judge Wilson

Hon. Lester F. Williamson Jr. (Lauderdale County Circuit Court)

Pro se for Appellant - Alicia Marie Ainsworth for Appellee

Briefed by [Frank Wood](#)

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BLEVINS V. WIGGINS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT MODIFICATION - CHANGE IN CIRCUMSTANCES - The factors to be considered in determining whether a material change in circumstances warrants a modification of child support, include (1) increased needs caused by advanced age and maturity of the children; (2) increased expenses; (3) inflation; (4) the relative financial condition and earning capacity of the parties; (5) the health and special needs of the child, both physical and psychological; (6) the necessary living expenses of the parties; (7) the estimated amount of income taxes the respective parties must pay; (8) the free use of a residence, furnishings, and automobile; and (9) such other facts and circumstances that bear on the support subject shown by the evidence

FAMILY LAW - CHILD SUPPORT MODIFICATION - ATTORNEY'S FEES - Attorney's fees are not awarded in child support modification cases unless the party requesting fees is financially unable to pay them

FACTS

Blevins and Wiggins were married in 2000 and resided as husband and wife until their separation in 2006. They had two children, one born in 1999 and the other born in 2004. The Chancery Court of Jackson County granted them a divorce on the grounds of irreconcilable differences in 2007. Blevins received physical custody of both children and the right to claim one of them for tax purposes. Wiggins received visitation privileges and the right to claim the other child for tax purposes. Wiggins was also ordered to pay \$130 per week in child support and one-half of any reasonable college expenses incurred in the event that the children chose to attend college. In 2011, Blevins filed a complaint for modification of Wiggins's child support payments, and in 2012, the Chancery Court entered an order increasing Wiggins's child support payments to \$192.37 per week. Blevins again filed a complaint for modification in 2016. This time Blevins requested an increase in child support payments based on "substantial and material changes in circumstances" related to the children's increased needs and age, as well as Wiggins's increased income. Blevins also sought custody of both children and the rights to claim both children for tax purposes. Wiggins filed a counterclaim, requesting custody of both children and the right to claim both for tax purposes. In 2017, the Chancery Court clarified its previous order regarding "reasonable" college expenses, ordering the parties to split all college expenses after financial aid was applied and denied the remainder of Blevins's requests for increased child support payments and custody. The court ordered each party to pay his or her own attorney's fees and did not address Wiggins's counterclaim in the final judgment. Blevins appealed.

ISSUES

Whether the trial court erred by denying (1) Blevins's request for modification and (2) Blevins's request for attorney's fees.

HOLDING

(1) Because an increase in income by the parent paying child support, by itself, does not warrant an increase in child support payments, and because an increase in a child's age, standing alone, is not evidence of a material change in circumstances, the trial court did not err in denying Blevins's request for modification of the child support agreement. (2) Because attorney's fees are not awarded in child support modification cases unless the party requesting fees is financially unable to pay them, and because the trial court found that Blevins had sufficient income to pay the attorney's fees, the trial court did not err in denying Blevins's request for attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

Affirmed - 2017-CA-01283-COA (Nov. 5, 2019)

Opinion by Judge C. Wilson

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

G. Charles Bordis IV for Appellant - Calvin D. Taylor for Appellee

Briefed by [David Boydston](#)

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BUCKHALTER V. STATE

CIVIL - POST-CONVICTION RELIEF

ADMINISTRATIVE REMEDIES - MISSISSIPPI DEPARTMENT OF CORRECTIONS - CALCULATING TIME SERVED - A calculation of time served is a decision or policy of MDOC, and a person challenging a decision or policy of MDOC must first seek administrative review before turning to the courts

FIFTH AMENDMENT - DOUBLE JEOPARDY - POST-CONVICTION RELIEF - When a person claims that a conviction or sentence was imposed in violation of the United States Constitution, a PCR motion is a valid avenue for challenging the legality of the sentence

FACTS

In 2010, Frederick Earl Buckhalter was sentenced to serve five years in the custody of the Mississippi Department of Corrections (“MDOC”) for unlawful possession of a firearm by a felon. The circuit court suspended all five years, and Buckhalter was placed on five years’ post-release supervision (“PRS”). In 2015, while still under PRS, Buckhalter was arrested for possession of a controlled substance, resulting in the revocation of his PRS, and the court ordered him to serve his original five-year sentence, incarcerated in MDOC custody. Buckhalter received credit for time served for his original 2010 sentence. In 2016, Buckhalter filed a post-conviction relief (“PCR”) motion entitled “Motion for Double Jeopardy,” alleging that he had been sentenced twice for the same offense in violation of the double-jeopardy clause of the Fifth Amendment. Because the calculation of time served is a decision or policy of the MDOC, the Harrison County Circuit Court held that it lacked jurisdiction to address the PCR motion and that Buckhalter should have gone through MDOC’s administrative remedies program (“ARP”) instead of filing a PCR motion with the court. Buckhalter appealed.

ISSUE

Whether the circuit court erred in dismissing Buckhalter’s PCR motion for lack of jurisdiction.

HOLDING

Because Buckhalter challenged the legality of his sentence, not an MDOC decision or policy, the circuit court had exclusive original jurisdiction to consider the merits of Buckhalter’s PCR motion.

Reversed & Remanded - 2018-CP-00615-COA (Nov. 5, 2019)

Opinion by Judge C. Wilson

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Melissa Fenwick](#)

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TRUST V. CIOTA

CIVIL - REAL PROPERTY

REAL PROPERTY - TAX SALES - NOTICE OF TAX SALES - Under Miss. Code Ann. § 27-43-3, the chancery clerk must issue redemption notice of the tax sale to the reputed owner of the real property by the following methods: (1) by personal notice as summons issued from the courts are served; (2) by mail at his usual street address; and (3) by publication in a public newspaper of the county in which the land is located

REAL PROPERTY - TAX SALES - NOTICE OF TAX SALES - Under Miss. Code Ann. § 27-43-3, should the clerk inadvertently fail to send notice as prescribed in this section, then the sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid

REAL PROPERTY - TAX SALES - STATUTORY CONSTRUCTION - Failure to comply strictly with the notice requirements of Miss. Code Ann. § 27-43-3 renders the purchaser's tax deed void, with no legal effect, and not simply voidable

FACTS

Christopher B. Schultz and his wife, Megan A. Ciota, failed to pay taxes on a property for the 2013 tax year. As a result, Christiana Trust acquired the property at a tax sale. Following the sale, the chancery clerk sent Ciota a notice of forfeiture, but Ciota failed to redeem the property within the statutory period. After the redemption period expired, the chancery clerk conveyed the property to Trust. In November 2016, Trust filed a complaint to quiet and confirm title to the property, and Ciota was served with process. After Ciota failed to file a timely answer or appear, Trust obtained a clerk's entry of default against Ciota. In January 2017, Trust filed a motion for a default judgment. In her answer, Ciota asserted a counterclaim seeking to set aside the tax sale. Trust then moved to strike Ciota's responsive pleadings as untimely. In July 2017, Ciota filed a motion for a declaratory judgment and a motion for summary judgment. In October 2017, the chancellor entered an order granting Ciota's motion to set aside the entry of default and denying Ciota's motion for summary judgment on grounds that the notices at issue were valid. In October 2017, Ciota filed a motion to alter or amend the judgment, arguing that the chancery clerk failed to properly publish Ciota's name, thus voiding the tax sale. In May 2018, the chancellor determined that the publication notice to Ciota failed to meet the statutory requirements because the chancery clerk had relied on the tax assessor records without searching his own land records. As a result, the chancellor granted Ciota's motion for summary judgment, voided the tax sale, and set aside the chancery clerk's conveyance. Trust appealed.

ISSUES

Whether (1) the chancery court erred in granting summary judgment that voided the tax sale and set aside the chancery clerk's conveyance to Trust and (2) Trust is entitled to damages.

HOLDING

(1) Because the chancery clerk's notice by publication failed to strictly comply with the statutory requirements of Miss. Code Ann. § 27-43-3, the chancery court did not err in granting summary judgment that voided the tax sale and set aside the chancery clerk's conveyance to Trust. (2) Because precedent and Miss. Code Ann. § 27-45-3 allows for damages, Christiana Trust is entitled to damages in the amount calculated by the chancellor. Therefore, the Court of Appeals affirmed in part and remanded in part the decision of the Harrison County Chancery Court.

Affirmed in Part & Remanded in Part - 2018-CA-00906-COA (Nov. 05, 2019)

Opinion by Presiding Judge Carlton

Hon. Jennifer T. Schloegel (Harrison County Chancery Court, First Judicial Dist.)

William Alex Brady II & Michelle Elizabeth Luber for Appellant - Lewie G. "Skip" Negrotto IV for Appellee

Briefed by [Sarah Schofield](#)

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GIVENS V. MISS. DEP'T OF CORR.

CIVIL - OTHER

ADMINISTRATIVE REMEDY - MERITORIOUS EARNED TIME - SEX OFFENDERS - An inmate shall not be eligible for the earned time allowance if the inmate was convicted of a sex crime.

FACTS

Matthew Givens was convicted and sentenced to serve twelve years in prison for fondling. Givens filed requests for relief through the Mississippi Department of Corrections ("MDOC") seeking a conditional reduction in his sentence for meritorious earned time. MDOC denied Givens's requests stating that he was not eligible to receive meritorious

earned time as a sex offender. Thereafter, Givens filed a complaint in the Hinds County Circuit Court which also found he was not eligible. Givens appealed.

ISSUE

Whether Givens is eligible to receive a conditional reduction in his sentence for meritorious earned time as a sex offender.

HOLDING

Because Miss. Code Ann. § 47-5-139(1)(d) prohibits sex offenders from earned time allowance, Givens is not eligible to receive a conditional reduction in his sentence for meritorious earned time. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018-CP-01379-COA (Nov. 5, 2019)

Opinion by Judge Lawrence

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Philip Lott](#)

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GREEN V. SINGING RIVER HEALTH SYS.

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - STATUTE OF LIMITATIONS - The one-year statute of limitations period on medical malpractice actions is tolled until the time that the patient discovers, or through reasonable diligence should have discovered, that he probably has an actionable injury

FACTS

In November 2016, Singing River Hospital (“Singing River”) mailed letters to patients treated by Dr. Millette for multiple sclerosis informing them that a re-evaluation of their condition was necessary. Debra Green had been Dr. Millette’s patient for many years and had previously been diagnosed with spasmodic torticollis. Later, she experienced issues with her balance, an unsteady walk, memory loss, and blurred vision. Green was given an MRI which revealed several white-matter lesions in both hemispheres of her brain. Green was diagnosed with probable multiple sclerosis and began taking prescription medication daily. A few months later, Dr. Millette diagnosed Green with possible demyelinating syndrome, a disease which includes multiple sclerosis for which he continued to prescribe multiple sclerosis medication for Green. Three doctors submitted a memo to the hospital indicating their concern about Dr. Millette’s history of, in their opinion, improperly diagnosing and/or treating patients. As a result, Singing River terminated Dr. Millette’s employment and sent letters to his patients who had been diagnosed with multiple sclerosis. Green received a letter and called Singing River, who scheduled an appointment for her to be reevaluated by a different neurologist. Green’s evaluation was completed in May 2017, and the doctor determined that she did not have multiple sclerosis and would not need to continue her medication. In May 2018, Green filed suit against Singing River for the negligence Dr. Millette in misdiagnosing her. The circuit court held that Green’s claim was time-barred and dismissed her case. Green appealed.

ISSUE

Whether the circuit court erred in finding that Green’s one-year limitation period began to run when she received the November 16, 2016 letter.

HOLDING

Because Green had no reason to believe that she did not have multiple sclerosis until May 2017, the one year statute of limitations began to run in May 2017, and therefore, the court ruled that her January 2018 notice of claim letter was timely. Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Circuit Court.

Reversed & Remanded - 2019-CA-00207-COA (Nov. 5, 2019)

Opinion by Judge McDonald

Hon. James D. Bell (Jackson County Circuit Court)

Walter C. Morrison IV & Tim C. Holleman for Appellant - Brett K. Williams, A. Kelly Sessoms III, James Everett Lambert III, & Jason R. Scheiderer for Appellee

Briefed by [Jennifer Lee](#)

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GUYSE V. STATE

CIVIL - STATE BOARDS & AGENCIES

APPELLATE REVIEW - MOOTNESS - ACTUAL CONTROVERSY - A case that does not have an “actual controversy” existing at the time of trial and at the time of appellate review is moot

STANDING - APPELLATE REVIEW - MOOTNESS - If the judgment on the merits would not be beneficial to the plaintiff or detrimental to the defendant, the case is moot

APPELLATE REVIEW - CONSIDERATIONS - ADVISORY OPINIONS - The Mississippi Court of Appeals does not issue advisory opinions

FACTS

Beginning on March 24, 2016, Roger Guyse was housed at the Newton County Jail during his criminal proceedings. Guyse filed six Administrative Remedy Program (“ARP”) requests, complaining of access to certain facilities. Guyse was then moved from the Newton County Jail. Following his conviction, Guyse was returned to the Newton County Jail. Guyse was awarded all privileges available to all other inmates. On December 12, 2016, Guyse was permanently removed from the Newton County Jail. In 2017, Guyse filed a motion for judicial review, claiming he was constitutionally guaranteed access to the following while at the Newton County Jail: “media;” TV news; newspapers; the Newton County Courthouse law library; a notary public; private; non-recorded phone calls; and adequate daily outdoor exposure. The Circuit Court denied Guyse’s motion because it was a frivolous lawsuit and because of improper service of process. Guyse appealed.

ISSUE

Whether Guyse’s motion for judicial review is moot.

HOLDING

Because a year elapsed between Guyse’s removal from the Newton County Jail and the filing of his motion for judicial review, his motion was moot and no “actual controversy” existed. Therefore, the Court of Appeals affirmed the judgment of the Newton County Circuit Court.

Affirmed - 2018-CP-00683-COA (Nov. 5, 2019)

Opinion by Judge Lawrence

Hon. Christopher A. Collins (Newton County Circuit Court)

Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Joshua Crownover](#)

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HARDY V. XANITOS, INC.

CIVIL - WORKERS’ COMPENSATION

WORKERS' COMPENSATION - APPEAL - STATUTE OF LIMITATIONS - A claimant must file a request or petition for review within twenty days of an administrative judge's decision

WORKERS' COMPENSATION - EXCUSABLE NEGLIGENCE - FACTORS - In determining what sorts of neglect will be considered excusable, the court should consider all relevant circumstances surrounding the party's omission, including the danger of prejudice to the party, the length of delay and its potential impact on judicial proceedings, the reason for the delay, and whether the movant acted in good faith

FACTS

On April 16, 2018, Tracie Hardy filed a petition to controvert with the Mississippi Workers' Compensation Commission ("the Commission"), alleging that she hurt her back while working in the course and scope of her employment as an operations manager for Xanitos, Inc. An administrative judge ("AJ") denied Hardy's claim for compensation, finding that Hardy failed to establish the existence of a work-related injury. On November 28, 2018, Hardy filed a pro se request for the Commission to review, but Hardy did not support her request for review with any evidence to explain or substantiate her reasons for failing to abide by the statutory timeline for appeal. On December 6, 2018, the Commission dismissed Hardy's request for review as untimely without reaching the merits of her claim. Hardy appealed.

ISSUES

Whether (1) counsel's late receipt of the AJ's denial and incorrect advice on the timeline for appeal was enough to show excusable neglect and (2) Hardy's belated attempt to substantiate her allegations with two documents tardily filed with the Commission after it dismissed her claim was enough to show excusable neglect.

HOLDING

(1) Because Hardy failed to provide any proof to the Commission that her counsel received the AJ's denial late, this assertion was not enough to show excusable neglect. (2) Because the tardy documents were not before the Commission when it dismissed Hardy's request for review, the court declined to consider them. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Affirmed - 2019-WC-00016-COA (Nov. 5, 2019)

Opinion by Judge C. Wilson

Mississippi Workers' Compensation Commission

Pro se for Appellant - Courtney Titus Davis for Appellees

Briefed by [Jack Byrd](#)

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HAWKINS V. JONES

CIVIL - MEDICAL MALPRACTICE

MEDICAL MALPRACTICE - LIMITATION OF ACTIONS - LIMITATIONS PERIOD - A claim for injury or death arising from medical malpractice must be filed within two years from the date the plaintiff discovers, or with reasonable diligence, should have discovered the alleged act, omission, or neglect that caused the injury or death

MEDICAL MALPRACTICE - LIMITATION OF ACTIONS - IN GENERAL - In determining when the statute-of-limitations period begins to run, courts focus on when a plaintiff, exercising reasonable diligence, should have first discovered the negligence, rather than the injury

FACTS

In February of 2014, Mary Hawkins sought treatment at Baptist Medical Center-Leake Inc. ("BMC-Leake") regarding pain and swelling in her left ankle. Hawkins saw Tommie Jones, a certified family nurse practitioner, who recommended that Hawkins receive x-rays, but Hawkins refused to do so. On July 18, 2014, Hawkins returned to BMC-Leake to see Jones and reported that she had injured her left ankle about five days earlier. At Jones's recommendation, Hawkins received x-rays on her lower leg. Two radiologists interpreted the images and noted soft-tissue swelling around

Hawkins's ankle, but neither radiologist identified a fracture or dislocation. On September 9, 2014, Hawkins consented to an MRI, and the radiologist's written report interpreting the images contained no mention of a fracture or dislocation. In light of the recurring issues with her ankle, Jones referred Hawkins to an orthopedic specialist at the Mississippi Sports Medicine Clinic ("MSMC"). On September 23, 2014, Dr. Jamey Burrow performed additional x-rays on Hawkins at MSMC and identified a posterior tibial tendon dysfunction and fibular stress fracture in her left ankle. Dr. Burrow placed Hawkins's ankle in a cast but informed her that she would benefit long term by having surgery. In late 2014, Dr. Burrow informed Hawkins that surgery was her only remaining treatment option, which Hawkins finally underwent in January of 2015. On October 14, 2016, Hawkins provided Jones and BMC-Leake with notice of her intent to pursue a medical malpractice claim against them. At trial, the Leake County Circuit Court granted summary judgment in favor of Jones and BMC-Leake, finding that the statute-of-limitations period had expired on Hawkins's claim. Hawkins appealed.

ISSUE

Whether the trial court erred in finding that the statute-of-limitations period began to run on September 23, 2014.

HOLDING

Because Hawkins learned of the tendon disfunction and stress fracture in her ankle on September 23, 2014, conditions that had remained undiagnosed despite her prior medical treatment at BMC-Leake, the trial court properly concluded that the statute-of-limitations period began to run on September 23, 2014, and had expired by the time Hawkins provided Jones and BMC-Leake with pre-suit notice of her intent to file a medical malpractice claim against them. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2017-CA-01652-COA (Nov. 5, 2019)

En Banc Opinion by Judge Tindell

Hon. Christopher A. Collins (Leake County Circuit Court)

Anselm J. McLaurin for Appellant - D. Collier Graham Jr. for Appellees

Briefed by [Breland Parker](#)

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HILTON V. HARVEY

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - PROCEEDINGS - DOMESTIC RELATIONS - Domestic relations matters are governed by Miss. R. Civ. P. 81 as opposed to Miss. R. Civ. P. 4

CIVIL PROCEDURE - SERVICE OF PROCESS - MODIFICATION-OF-CUSTODY - Pursuant to Miss. R. Civ. P. 81(d)(2), modification-of-custody matters are triable within 7 days after completion of service of process in any manner other than publication

FACTS

In 2012, Natasha Hilton and Chris Harvey were granted an irreconcilable-differences divorce by the Rankin County Chancery Court. Hilton then filed a petition to require Harvey to sign a passport application for their children. Harvey claimed he was never served the summons to appear nor had he agreed to a continuance that Hilton had stated he had agreed to. Subsequently, Harvey filed an answer to Hilton's petition and filed a counter-petition for contempt, modification of custody, and attorney's fees. The chancellor granted Harvey's petition. Hilton appealed.

ISSUE

Whether Harvey failed to properly serve Hilton an Miss. R. Civ. P. 81 summons for his counter-petition in violation of the 120-day deadline provided by Rule 4(h).

HOLDING

Because Rule 81 governs domestic relations matters and has no 120-day deadline, Harvey's service was not defective. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2017-CA-01374-COA (Nov. 5, 2019)

Opinion by Judge Tindell

Hon. John S. Grant III (Rankin County Chancery Court)

Michael Chad Moore for Appellant - Janice T. Jackson for Appellee

Briefed by [Cristofor Taylor](#)

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LANG V. PUB. EMP'S.' RET. SYS. OF MISS.

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - APPEALS - STATE BOARDS & AGENCIES - An agency's conclusions must remain undisturbed unless the agency's order is not supported by substantial evidence, is arbitrary or capricious, is beyond the scope or power granted to the agency, or violates one's constitutional rights

CIVIL PROCEDURE - APPEALS - STATE BOARDS & AGENCIES - If an agency's decision is not based on substantial evidence, it necessarily follows that the decision is arbitrary and capricious

CIVIL PROCEDURE - REGULATIONS - STATE BOARDS & AGENCIES - The Mississippi Supreme Court has held that medical diagnoses provided by a claimant's licensed physicians are objective, not subjective, evidence of disability

FACTS

Gloria Lang was a corrections officer for the Mississippi Department of Corrections. In 2010, Lang appealed a decision by the Public Employees' Retirement System ("PERS") that denied her request for non-duty related disability retirement benefits. The Court of Appeals then remanded the matter to the PERS Disability Appeals Committee ("the Committee") which held a hearing to determine Lang's disability status. During the hearing, Lang was required to show objective medical evidence of her disability, which is defined as documented medical examinations and treatments. Lang offered evidence of a March 2008 neck surgery performed by her neurosurgeon, Dr. Nader, to treat a "degenerative/bulging disc" issue. After the surgery, Lang consulted a physical therapist who described her limited abilities but did not conclude a disability status. Still experiencing pain in her lower extremities, Dr. Nader referred Lang to a pain specialist as well. Dr. Nader ultimately concluded that Lang was unable to return to her current job or perform the duties of her employment, assigning Lang an 8% whole body impairment disability rating under American Medical Association Guidelines. However, on April 23, 2008, Dr. Collipp performed an independent examination of Lang and concluded that Lang was able to perform a minimum of light-medium duty with room for future improvement. The Committee gave less weight to Dr. Nader's finding of a disability due to his referrals to other specialists and stated that his findings were not supported by his own clinic notes, a criterion not required under the objective medical evidence standard. The Committee also found that Lang's MRI and EMG results at the time of the surgery did not support a finding of a disability. However, the Committee found that Dr. Collipp's independent examination regarding Lang's physical ability was supported by other medical evidence in the record. The Committee recommended to the PERS Board of Trustees ("the Board") that it deny Lang's request. The Board ultimately adopted the Committee's recommendation. The Hinds County Circuit Court affirmed the Board's decision. Lang appealed.

ISSUES

Whether PERS's decision to deny Lang non-duty related disability retirement benefits was (1) supported by substantial evidence and (2) arbitrary and capricious.

HOLDING

(1) Because Lang offered sufficient objective medical evidence determining she was disabled, and because PERS provided no evidence in the record that contradicted Dr. Nader's finding of disability, PERS's decision to deny Lang

non-duty related disability retirement benefits was not supported by substantial evidence. (2) Because PERS's decision was not based on substantial evidence, it necessarily follows that the decision was arbitrary and capricious. Therefore, the Court of Appeals reversed and rendered the judgment of the Hinds County Circuit Court.

DISSENT

Judge Greenlee argued that the court's review of PERS's disability determination is limited and a rebuttable presumption exists in favor of PERS's decision. The claimant has the burden of proving the contrary, and the court is not in a position to reweigh the evidence. In addition, he argued that the ultimate question of this case was not whether there was substantial evidence to support Lang's disability, but rather whether there was substantial evidence to support PERS's finding that Lang was capable to return to her prior employment.

Reversed & Rendered - 2018-SA-00554-COA (Nov. 5, 2019)

Opinion by Presiding Judge Carlton - Dissent by Judge Greenlee

Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial Dist.)

George S. Luther & Thomas Upton Reynolds II for Appellant - Samuel Martin Millette III & Jane L. Mapp (Att'y Gen. Office) for Appellee

Briefed by [Charles Matranga](#)

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WATSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PERMISSION TO FILE MOTION - LACK OF JURISDICTION - The defendant must be granted permission from the Mississippi Supreme Court before being able to file a motion for post-conviction relief

FACTS

Dexter Watson was convicted of murder and sentenced to life in prison. Watson's conviction and sentence were affirmed on direct appeal. Following the affirmation, the Mississippi Supreme Court denied all three of Watson's applications for leave so that he could file a motion for post-conviction relief ("PCR") in the trial court. Subsequently, Watson filed a writ of habeas corpus in the Sunflower County Circuit Court alleging that there was a deficiency in his indictment. The court denied his petition because he failed to state a claim upon which relief could be granted. Watson appealed.

ISSUES

Whether the trial court erred in its decision to deny Watson's writ of habeas corpus for failure to state a claim upon which relief can be granted.

HOLDING

Because Watson was not granted permission from the Mississippi Supreme Court to file a motion for PCR, the trial court lacked jurisdiction to adjudicate Watson's petition. Therefore, the Court of Appeals vacated and rendered the case.

Vacated & Rendered - 2018-CP-01169-COA (Nov. 5, 2019)

Opinion by Presiding Judge Wilson

Hon. Carol L. White-Richard (Sunflower County Circuit Court)

Dexter Watson (Pro Se) for Appellant - Billy L. Gore for Appellee

Briefed by [Matthew Russ](#)

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YOUNG V. ILL. CENT. R.R.

CIVIL - PERSONAL INJURY

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Miss. R. Evid. 702 provides that when determining admissibility of expert testimony, courts must consider whether the expert opinion is based on scientific knowledge (reliability) and whether the expert opinion will assist the trier of fact to understand or determine a fact in issue (relevance); additionally, the *Daubert* factors, as follows, should be considered: (1) whether the theory can be, and has been, tested; (2) whether the theory has been published or subjected to peer review; (3) any known rate of error; and (4) the general acceptance that the theory has garnered in the relevant expert community

CIVIL PROCEDURE - APPEAL AND ERROR - JUDGMENT NOTWITHSTANDING THE VERDICT - When reviewing the grant of a motion for judgment notwithstanding the verdict (JNOV), the Court of Appeals must determine whether the trial court properly found that the jury's verdict was not supported by a legally sufficient evidentiary basis

FACTS

Arthur Young was injured while working as a trackman for Illinois Central Railroad Company ("Illinois Central"). Young reported the incident to his supervisor and others and asked to go to the hospital, but he was advised not to do this so that an accident report would not be filed. Throughout the ten years following the accident, Young sporadically visited the doctor for his back pain. Eventually, he filed suit in the Holmes County Circuit Court under the Federal Employer's Liability Act ("FELA"). He offered three expert witnesses: Dr. Childress, his treating orthopedic physician; Dr. Giles, a vocational expert; and Dr. Lynch, an economist. Dr. Giles and Dr. Lynch calculated Young's lost wages based on Dr. Childress's testimony that Young was disabled. However, on cross-examination, Dr. Childress testified that Young was only permanently impaired and could still hold some type of job, which was not taken into account in the calculations. Illinois Central moved to exclude Dr. Giles and Dr. Lynch due to their erroneous calculations based on Young's inability to work. The trial court upheld the motion. The jury nonetheless awarded Young \$1,000,000 in lost future wages. The trial court then granted Illinois Central's motion for JNOV. Young appealed.

ISSUES

Whether the trial court erred in (1) upholding Illinois Central's challenge to Young's two expert witnesses and (2) granting Illinois Central's motion for JNOV.

HOLDING

(1) Because Dr. Giles's and Dr. Lynch's calculations were based on Young's permanent disablement instead of his permanent impairment and on the unsupported belief that Young was unable to perform at an equivalent job, their calculations were unreliable. (2) Because there was insufficient evidence to support the \$1,000,000 in future wage-loss due to the exclusion of the vocational and economic expert testimony, as well as the lack of certain evidence that Young was unable to perform his duties or duties of an equivalent job, the jury verdict could not be supported. Therefore, the Court of Appeals affirmed the judgment of the Holmes County Circuit Court.

Affirmed - 2018-CA-00498-COA (Nov. 5, 2019)

Opinion by Judge McDonald

Hon. Jannie M. Lewis-Blackmon (Holmes County Circuit Court)

M. Quentin Emick Jr. & C. E. Sorey II for Appellant - Glenn F. Beckham & Harris Frederick Powers III for Appellee

Briefed by [Liza Linginfelter](#)

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COURT OF APPEALS - CRIMINAL CASES

CRIMINAL - FELONY

SENTENCING - JUVENILES - FACTORS - A court must consider the following factors when determining if a juvenile may be sentenced to life in prison without parole: (1) chronological age and its hallmark features – among them immaturity, impetuosity, and failure to appreciate risks and consequences; (2) family and home environment that surrounds the defendant; (3) circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressure may have affected him; (4) that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth; and (5) the possibility of rehabilitation

CONSTITUTIONAL LAW - SENTENCING - JUVENILES - The Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders

SENTENCING - JUVENILES - RESTRICTIONS - Under *Miller*, a life-without-parole sentence should be reserved for those rare children whose crimes reflect irreparable corruption, and juvenile murderers whose crimes reflect only transient immaturity must be deemed parole eligible

SENTENCING - JUVENILES - SUFFICIENCY - Mississippi law does not require a specific finding of a juvenile offender's permanent incorrigibility

FACTS

In 2004, Eugene Ealy and Dunta Dotson decided to steal a four-wheeler from the home of Robert Jeanes. Ealy and Dotson first approached the home and knocked on the door. Jeanes answered and Ealy asked to borrow his phone. Jeanes obliged and after using the phone the two boys walked back to their previously stolen truck. Ealy then suggested that the two rob and murder Jeanes. Ealy and Dotson again approached Jeanes door armed with .38 caliber pistols. This time Ealy again asked to use Jeanes's phone and when Ealy returned the phone Dotson shot Jeanes in the head. Ealy and Dotson proceeded to rob Jeanes and stole both of his vehicles. One of Jeanes's vehicles was later discovered parked across the street from Ealy's father's house. Ealy agreed to talk to an investigator, waived his *Miranda* rights, and confessed to his participation in the crime. Ealy was indicted for capital murder and later pled guilty to murder. The Madison County Circuit Court sentenced Ealy to serve life in the custody of the Mississippi Department of Corrections without eligibility for parole. In 2013, Ealy filed a motion for post-conviction relief ("PCR"), seeking to vacate his sentence based on the United States Supreme Court's decision in *Miller*. The motion was granted, and the Madison County Circuit Court vacated Ealy's sentence for resentencing under *Miller*. The court later conducted a *Miller* sentencing hearing and made oral findings on each *Miller* factor. Based on its *Miller* evaluation, the circuit court concluded that the evidence supported a sentence of life without parole. Ealy appealed.

ISSUES

Whether (1) the Eighth Amendment required the circuit court to make a specific finding of permanent incorrigibility; (2) due process required the circuit court to make a specific finding of permanent incorrigibility; (3) the circuit court was the proper sentencing authority; (4) the circuit court erred in placed the burden on Ealy to prove parole eligibility; (5) the circuit court applied an incorrect legal standard; (6) the circuit court's statements regarding the circumstances of the crime were supported by the evidence; and (7) Ealy's sentence was constitutional.

HOLDING

(1) Because the United States Supreme Court has held that *Miller* does not require trial courts to make a finding of fact on a child's incorrigibility, the trial court was not required by the Eighth Amendment to make such a finding. (2) Because the Supreme Court has found that *Miller* does not require an explicit finding on a juvenile's incorrigibility, the trial court was not required to make such a finding. (3) Because Ealy pled guilty to murder and signed a petition waiving his right to trial by jury, the circuit court was the proper sentencing authority. (4) Because, under Mississippi law, the offender must persuade the judge that he is entitled to relief under *Miller*, the trial court did not err in placing the burden on Ealy to prove parole eligibility. (5) Because the circuit court applied the relevant factors outlined in *Miller* and *Parker*, the trial court applied the correct legal standard. (6) Because the circuit court relied on multiple accounts of the circumstances of the crime and the testimony of a psychologist, the circuit court's decision was supported by substantial evidence. (7) Because neither the State of Mississippi nor the United States Supreme Court has found a life without parole sentence

for juveniles to be a constitutional violation, so long as the requirements of *Miller* and *Montgomery* are met, Ealy's sentence was not unconstitutional. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

CONCURRENCE

Judge Lawrence argued that circuit courts should be required to make an on-the-record finding that a juvenile is permanently incorrigible. He expressed concern with the current state of the law and argued that the sounder practice would be to mandate that trial courts clearly state that the juvenile is one of the rare offenders whose crimes have demonstrated that he or she is irreparably corrupt or permanently incorrigible.

Affirmed - 2017-KA-01536-COA (Nov. 5, 2019)

En Banc Opinion by Judge Greenlee - Concurrence by Judge Lawrence

Hon. John Huey Emfinger (Madison County Circuit Court)

Jacob Wayne Howard for Appellant - Matthew Walton (Att'y Gen. Office) for Appellee

Briefed by [Bryant Carlton](#)

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JOINER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEF REQUIREMENTS - When appellate counsel represents an indigent criminal defendant and does not believe that the defendant's case presents any arguable issues on appeal, counsel must file a brief that certifies counsel has reached this conclusion after scouring the record thoroughly, specifically examining: (a) the reason for the arrest and the circumstances surrounding the arrest; (b) any possible violations of the client's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not, and (h) possible misapplication of the law in sentencing

CRIMINAL PROCEDURE - NO APPEALABLE ISSUES - NOTICE - In compliance with *Lindsay*, counsel must send a copy of the brief to the defendant, inform the defendant that no appealable issues were identified, and notify the defendant of his or her right to file a pro se brief

CRIMINAL PROCEDURE - NO APPEALABLE ISSUES - APPELLATE REVIEW - After counsel files a *Lindsay* brief and the defendant has the opportunity to file a pro se brief, the court will review the record and any pro se brief filed by the defendant to determine if any arguable issue exists for appellate review

FACTS

Nadarius Joiner, Printess Joy, and Cornelius Joiner were indicted for two counts of armed robbery. These charges stemmed from allegations that the three men robbed two individuals outside of an apartment complex. At trial, the first victim testified that Nadarius approached him with a gun, hit him, and took money out of his pocket. Regarding the second victim, witnesses testified that the victim was held at gunpoint, but no witness testified that the three men took property from him. Nadarius, Printess, and Cornelius moved for directed verdict on both counts. The Quitman County Circuit Court dismissed the count regarding the second victim because the State failed to prove all elements of armed robbery. Additionally, the Quitman County Circuit Court granted Cornelius's motion for directed verdict on the other count because no evidence linked him to the robbery. A jury convicted Nadarius and Printess on the remaining count of armed robbery. Nadarius's appellate counsel filed a brief pursuant to *Lindsey v. State*, indicating that counsel did not believe that Nadarius's case presented any arguable issues on appeal. Counsel also mailed Nadarius a copy of the brief and informed him of his right to file a pro se brief. However, Nadarius did not file one.

ISSUE

Whether Nadarius's case presented any arguable issues for appellate review.

HOLDING

Because Nadarius’s counsel’s brief complied with the requirements of *Lindsey*, and because Nadarius did not file a pro se brief after his counsel notified him that he had the opportunity to do so, the court independently reviewed the record and found no arguable issues warranting appellate review. Therefore, the Court of Appeals affirmed the judgment and sentence of the Quitman County Circuit Court.

Affirmed - 2018-KA-01327-COA (Nov. 5, 2019)

Opinion by Judge McCarty

Hon. Linda F. Coleman (Quitman County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Elena Mosby Peters](#)

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McLAUREN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - APPELLATE PROCEDURE - LINDSEY BRIEF - When an indigent criminal defendant’s appellate counsel does not believe the defendant’s case presents any arguable issues on appeal, the defendant’s attorney must certify in his or her brief that there are no arguable issues supporting the client’s appeal, and he or she has reached this conclusion after scouring the record thoroughly, meeting the requirements outlined in *Lindsey v. State*

CRIMINAL LAW - APPELLATE PROCEDURE - WITHDRAWAL - After receiving a brief indicating an indigent criminal defendant’s counsel does not believe the defendant’s case presents any arguable issues on appeal, the Court will review the record and any pro se brief filed by the defendant to determine whether any arguable issue exists

SENTENCING - FELONY - DUI - Miss. Code Ann. § 63-11-30(2)(c) states that a third DUI conviction in five years is automatically considered a felony offense

FACTS

Boyd McLaren was arrested for driving under the influence of alcohol (“DUI”). McLaren had two prior DUI convictions, and because they both occurred within the preceding five years, the third offense was automatically classified as a felony. He was sentenced to five years and ordered to pay a \$3,000 fine. McLaren appealed. Finding no arguable issue for appeal, McLaren’s appellate counsel filed a brief pursuant to *Lindsey v. State*. McLaren was given additional time to file a supplemental brief but did not. McLaren appealed.

ISSUE

Whether McLaren’s appellate counsel complied with the requirements set forth in *Lindsey*.

HOLDING

Because McLaren’s appellate counsel reviewed the case and found no arguable issues for appeal, he met the requirements set forth in *Lindsey*. The Court of Appeals review of the record revealed no arguable issues that would warrant reversal. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2018-KA-01617-COA (Nov. 5, 2019)

Opinion by Judge McCarty

Hon. Dal Williamson (Jones County Circuit Court, Second Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Winston Hudson](#)

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STORY V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CAPITAL MURDER - UNDERLYING FELONY - Where capital murder is committed in the commission of a robbery, it is only necessary to prove that the defendant acted in concert or aided and abetted in the robbery

POST-TRIAL MOTIONS - INEFFECTIVE ASSISTANCE OF COUNSEL - PREJUDICE PRONG - Where a defendant can prove there was a deficiency in his counsel, but cannot prove that there was a reasonable probability that the motion would have been granted, there is no ineffective assistance of counsel

CRIMINAL LAW - KIDNAPPING - AIDING AND ABETTING - Where the defendant offers assistance to the kidnapper by providing a weapon and accompanies him while confining the victim, there is sufficient evidence to convict him of kidnapping

FACTS

Tavoris Marshall, Kevion Gorman, and Stanley Self were at Marshall's grandmother's house on November 12, 2013. D'Bryus Story and Jayvious Johnson were with two others at a different location when Johnson stated he wanted to rob someone to which Story replied, "let's go." Story and Johnson then went to Marshall's house where Story knocked on the window, and Self opened the door so that Story could buy some pills from Marshall. When Self attempted to lock the door after Story left, Story reentered the home with Johnson. Self followed the two into Marshall's bedroom where he noticed the two were armed. Johnson asked Marshall where the money was, and after no response, shot Marshall and Gorman. Johnson then pointed the gun at Self and pulled the trigger, but the gun jammed. Self rushed Johnson and engaged in a tussle before running toward the front door. Johnson grabbed the money and pills. Story handed his gun to Johnson and followed him to the front door where they met Self and Marshall's grandmother. Johnson grabbed Self and forced him to their vehicle while Self pleaded for his life. After fleeing the scene, Story and Johnson took Self to a friend's house where they sorted the money and drugs. Johnson threatened Self to keep quiet or he would have him killed. Story was arrested shortly after and convicted of conspiracy to commit robbery, capital murder, and kidnapping. Story appealed.

ISSUES

Whether there was (1) ineffective assistance of counsel for not filing any post-trial motions; (2) sufficient evidence to convict Story for capital murder; and (3) sufficient evidence to convict Story for kidnapping.

HOLDING

(1) Because there was no reasonable probability that Story's post-trial motions would have been granted, there was no ineffective assistance of counsel. (2) Because Story acted in concert with Johnson in committing the robbery, there was sufficient evidence to convict him of capital murder. (3) Because Story gave Johnson a gun when Johnson's jammed, and because Story followed behind with the money and drugs when Johnson was escorting Self away, there was sufficient evidence to convict Story of kidnapping. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2018-KA-00464-COA (Nov. 5, 2019)

Opinion by Chief Judge Barnes

Hon. Albert B. Smith III (Bolivar County Circuit Court, Second Judicial Dist.)

Vicki L. Gilliam & Brandi Denton Gatewood for Appellant - Matthew Wyatt Walton (Att'y Gen. Office) for Appellee

Briefed by [John Forrest Kelly](#)

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